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No. 74-1025

IN THE

Supreme Court of the United States

OCTOBER TERM 1975

BURTICE A. HINES, *ET AL.*,
Petitioners,

v.

ANCHOR MOTOR FREIGHT, INC., *ET AL.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF, AND BRIEF, ON BEHALF OF PROD, INC., JAMES BANYARD AND GEORGE E. KISS

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July 3, 1975

ABE DUPLICATORS, INC.–1722 Eye Street, N.W.–Washington, D.C.–298-8537

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MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*

PROD, Inc., James Banyard and George Kiss hereby move, pursuant to Rule 42 of this Court, for leave to file a brief as *amici curiae*, urging reversal of the decision of the Court of Appeals insofar as it upheld dismissal of petitioners' §301 action against Anchor Motor Freight. Counsel for petitioners has consented to the filing of this brief; counsel for respondents have refused to consent. For the reasons discussed hereafter, we submit that our motion

should be granted in the interests of securing vital background information concerning the structure and operation of the Teamster joint labor-management committee which rendered the grievance award to which the Court of Appeals has deferred below. Before deciding whether, and under what circumstances judicial deference to a "final" Teamster joint committee decision might be appropriate, in the context of a §301 proceeding by individual employees, we believe that the Court should possess an understanding of the underlying grievance machinery and procedures.

PROD is a non-profit corporation, also known as the Professional Drivers Council for Safety and Health, which is supported by the voluntary membership dues of approximately 1,200 professional drivers, the vast majority of whom are covered by the Teamster National Master Freight Agreement and related supplements containing grievance machinery providing in effect only for joint labor-management committee resolution of their grievances protesting employer contract violations.

James Banyard is an individual member of Local 407 who was discharged in 1969 by McLean Trucking Company for refusing to drive a dangerously overloaded truck in violation of state law. His grievance was processed by the Teamsters Union up through the hierarchy of its joint committee system until it was eventually denied by the National Joint Committee despite the parties' concession that the reason for his discharge was his refusal to drive an admittedly illegal vehicle, and in spite of the protection of Article 16 of the National Master Freight Agreement which prohibited McLean from requiring its employees to operate such vehicles. Mr. Banyard ultimately secured a reinstatement and backpay award from the National Labor Relations Board only because his discharge also happened

to violate the statute it administers. *See Banyard v. N.L.R.B.*, 505 F.2d 342 (D.C. Cir. 1974); *McLean Trucking Co.*, 216 NLRB No. 161 (1975).

George E. Kiss is a driver for The Service Transport Company. He is also an elected union steward whose job it is to handle fellow employees' grievances and present them to joint committees, and he is a member in good standing of Local 377, a defendant in the underlying proceeding. The collective bargaining agreement between Local 377 and Mr. Kiss' employer contains grievance machinery providing in effect for the final resolution of all employee disputes concerning the employer's contract violations by submission to joint committees. Moreover, in the event the Court of Appeals decision should be upheld, Mr. Kiss, as a member of Local 377, stands the risk of being injured to the extent that increased damages may be awarded to petitioners against his Local Union.

PROD, and its entire membership, Banyard and Kiss all share an intimate familiarity with the structure and workings of Teamster joint grievance committees and a strong interest in the outcome of this proceeding. They offer to provide this Court with information it has not had the opportunity to consider respecting Teamster joint committees similar in every respect to the committee which arrived at the decision to which the Court of Appeals deferred below. It does not appear that this information would otherwise be made available to this Court.

In their brief, *amici* will demonstrate why joint committee decisions to deny individual Teamster members' breach of contract claims against trucking companies really constitute no more than decisions by their Union not to process their grievances and are accordingly not

the type of "final adjustment" of a grievance to which this Court has said the courts should defer. Whatever deference this Court might feel it would be appropriate to accord to arbitral decisions respecting claims by employees that they were the victim of an employer breach of contract where they can show their union breached its duty of fair representation in processing their claim, *amici* will show why the same degree of deference may not properly be accorded to joint committee awards.

Respectfully submitted,

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July 3, 1975

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BRIEF OF *AMICI CURIAE*, PROD *ET AL.*, URGING REVERSAL

BACKGROUND

Through the years this Court has slowly molded a general body of law to guide the judiciary in handling suits arising under collective bargaining agreements. In order to promote the Congressional objective embodied in §203(d) of the LMRA[1] that the desirable method of settling grievances is by "[f]inal adjustment by a method agreed upon by the parties" as a means of promoting industrial peace,

[1] 29 U.S.C. 173(a).

this Court has favored judicial deference to contractual grievance-arbitration procedures.[2] Thus, the Court has held that final arbitration awards must be enforced by the courts even though they might disagree with the arbitrator's interpretation of the contract, provided his decision draws its essence from the collective bargaining agreement.[3] Similarly, the Court has ruled that the parties to the agreement may sue to compel arbitration[4] and that in determining whether to grant the requested relief, the sole function of the courts should be to ascertain "whether the party seeking arbitration is making a claim which on its face is governed by the contract",[5] and in doing so, all doubts should be resolved in favor of arbitration.[6]

One of the most troublesome problems the Court has faced, however, concerns whether and under what circumstances it should permit individual employees, rather than unions, to sue employers for alleged breach of collective bargaining agreements. In light of the federal policy favoring the resolution of all such disputes *via* the agreed-upon grievance procedures, the Court held in *Republic Steel v. Maddox*, 379 U.S. 650 (1965), that employees wishing to assert employer contract violations in the courts

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[2] *See Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957).

[3] *United Steelworkers v. Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960).

[4] *Lincoln Mills, supra.*

[5] *United Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 568 (1960).

[6] *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960).

must at least attempt first to use the contract grievance procedure to obtain redress. And, in determining whether an employee could later resort to the courts, the test was generally whether the employee could show that he was the victim of union malice, fraud or other dishonest behavior. *See Ford Motor Co. v. Huffman*, 345 U.S. 330 (1953); *Humphrey v. Moore*, 375 U.S. 335, 348 (1964).[7]

In *Vaca v. Sipes*, 386 U.S. 171 (1967), the Court examined in some depth the plight of the individual employee in a discharge situation for the first time. It acknowledged that since contract grievance procedures are generally devised and controlled by unions and employers, they "may well prove unsatisfactory or unworkable for the individual grievant." *Id.* at 185.[8] The Court observed:

> We cannot believe that Congress, in conferring upon employers and unions the power to establish exclusive grievance procedures, intended to confer upon unions such unlimited discretion to deprive injured employees of all remedies for breach of contract. Nor do we think

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[7] It should be noted that in both of these cases the alleged contract rights being pressed by the complainants were in direct conflict with the interests of a large segment of the other bargaining unit employees. The Court was understandably reluctant to circumscribe too narrowly the union's discretion in light of the fact that the bargaining process of necessity subordinates individual interests to the collective interests of all the employees in the bargaining unit which the Union is, in turn, obligated to represent.

[8] The Court has reaffirmed this observation in two more recent opinions: *Glover v. St. Louis-San Francisco Ry. Co.*, 393 U.S. 324, 330 (1969); *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 58 n. 19 (1974).

> that Congress intended to shield employers from the natural consequences of their breaches of bargaining agreements by *wrongful* union conduct in the enforcement of such agreements. *Id.* at 186 (Emphasis added.).

Thus, the Court concluded, individuals should be permitted to bring actions against their employers for wrongful discharges *provided they could prove* that the union breached its duty of fair representation in handling their grievances. Moreover, the Court went on to conclude that to the extent the union's breach may have enhanced or contributed to the employee's injury, the courts should fashion a remedy against the union as well as the employer. *Id.* at 187. The following formula for apportioning damages between the employer and union was adopted: "damages attributable solely to the employer's breach of contract should not be charged to the union, but increases if any in those damages caused by the union's refusal to process the grievance should not be charged to the employer." *Id.* at 197-98. Finally, although the nature of their respective liabilities are quite different, it is clear that the Court anticipated that, as a result of its decision, "the courts will be compelled to pass upon whether there has been a breach of the duty of fair representation *in the context of many §301 breach-of-contract actions.*" *Id.* at 187 (Emphasis added.).

It is important to note, however, that *Vaca* arose in the context of an employee's effort to override his union's decision not to process his grievance through the final step of the grievance machinery — arbitration. Recognizing the union's need for flexibility in weeding out frivolous grievances, the Court ruled that the individual would

be entitled to obtain judicial review of his breach of contract claim only in the event he could first demonstrate that the union's decision not to arbitrate his claim was "arbitrary, capricious or in bad faith." *Id.* at 190. However, the Court did not focus its attention upon the situation where an employee might ask a court to override not a union decision, but rather a final arbitral award. In light of this Court's opinion in *Enterprise Wheel* concerning the strong federal policy of upholding final arbitral decisions, the courts will naturally be reluctant to upset such awards even in the face of a union breach of duty in handling the member's grievance. And, since this Court has ruled in *Vaca* that damages may be assessed against unions in suits by individual members for such breaches of their duty of fair representation, the courts may be content that they will not effectively be denying the aggrieved individual relief. These considerations may well have played a role in the Court's decision below.

However, regardless of whatever degree of finality the Court might believe it would be appropriate to attach to a final arbitration decision when it is being attacked by an aggrieved individual in a §301 proceeding, the same degree of finality should not be attached to joint committee settlements of their underlying contract claims. Yet, the Court of Appeals below is not the only court which has accorded a joint committee award the same degree of respect and finality.[9] The genesis of this judicial policy

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[9] *See e.g., Harris v. Chemical Leaman Tank Lines, Inc.*, 437 F.2d 167 (5th Cir., 1971); *Morris v. Werner-Continental, Inc.*, 466 F.2d 1185 (6th Cir., 1972); *Price v. Int'l. Bro. Teamsters*, 457 F.2d 605 (3rd. Cir., 1972).

of according equal treatment to joint committee awards lies in this Court's decision in *General Drivers v. Riss & Co.*, 372 U.S. 517 (1963), where it was held that the union might sue to compel employer compliance with a joint committee grievance settlement in spite of the fact it was not the equivalent of an arbitration award so long as the parties had agreed contractually to be bound by such "final" grievance settlements. We do not take issue with this holding as it applies to suits by either of the parties to the collective bargaining agreement to obtain compliance by the other with a joint committee award favorable to it. However, we do believe that routine extension of that holding to require judicial deference to joint committee decisions upholding alleged employer breach of contract claims by discharged employees is improper. Yet, this is what the Court of Appeals did implicitly below. For reasons we shall discuss *infra*, *amici* submit that this Court should limit the scope of its holding in *Riss* so as to preclude the more or less automatic deference the courts accord to joint committee awards in §301 suits by individuals whose breach of contract claims against their employers have been denied by the joint Teamster-management panels. We might add that those commentators who have addressed this particular problem agree with this contention.[10]

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[10] Feller, *A General Theory of the Collective Bargaining Agreement*, 61 *Cal. L. Rev.* 663, 836-838 (1973); Tobias, *Individual Employee Suits for Breach of the Labor Agreement and the Union's Duty of Fair Representation*, 5 *Toledo L. Rev.* 514, 540-543 (1974).

ARGUMENT

THE TEAMSTER JOINT LABOR-MANAGEMENT GRIEVANCE COMMITTEE DECISION BELOW IS UNWORTHY OF JUDICIAL DEFERENCE

The effect of the Court of Appeals decision below is to let Anchor Motor Freight off the hook, scott free, in spite of the fact the Company was in a position effectively to shape, if not actually to decide, petitioners' grievance against it. Under these circumstances, regardless of whether or not its action toward the petitioners may have been violative of the collective bargaining agreement, it is unlikely that the joint committee would find such a violation. As a result, even though the petitioners may still be able to recover some damages against Teamster Local 377, assuming they can prove that it breached its duty of fair representation, they have effectively been denied the opportunity to obtain a reinstatement award against the one truly culpable party who has the capacity to remedy their injury. The fact of the matter is that joint committees are structurally incapable of rendering impartial judgments on employee breach of contract claims due to the employer participation on those committees. Yet, the effect of the decision below will be to encourage employer efforts to rig decisions and will exonerate them from any future liability when they have procured a favorable decision. To understand why, we will examine the structure of the Teamster Joint Committee grievance machinery contained in the National Master Freight Agreement which covers the bulk of the nation's trucking companies. The grievance machinery contained in this Agreement and most of its various related supplements is similar in every regard to the machinery which produced the decision to which the Sixth Circuit deferred below.

While most collective bargaining agreements contain a multi-step grievance machinery for the settlement of disputes arising under the contract, machinery which ultimately leads to impartial arbitration,[11] most Teamster trucking agreements provide only for the submission of disputes to bi-parte committees made up of an equal number of labor and employer representatives.[12] These

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11 In a 1973 study by the Bureau of Labor Statistics entitled, "Characteristics of Agreements Covering 1,000 Workers or More," it is reported that 91% of all major collective bargaining contracts contain grievance machinery providing for arbitration. See Table 70, p. 64, *U.S. Bureau of Labor Statistics, Dep't. of Labor, Bull. No.* 1822 (July 1, 1973).

12 Several of the Teamster Area Supplements to the Master Freight Agreement do provide for automatic arbitration of discharge cases after a certain committee in the hierarchy has deadlocked. These Supplements cover a total of 15 states, mostly in the West, and the District of Columbia.

However, the bulk of the supplemental agreements (covering 33 other states) contain grievance machinery which does not allow the submission of grievances to arbitration except in discharge cases where "Deadlocked cases *may* be submitted to umpire handling if a majority of the Joint Area Committee determines to submit such matter to an umpire for decision." (See e.g., Article 45(e) of the Central States Over-the-Road Supplement) (Emphasis added). *Amici* know of no grievance ever having been referred to an umpire pursuant to this procedure. In fact, since a deadlocked grievance in a discharge case is the equivalent of a victory for the industry representatives, it is difficult to conceive a situation where they might agree to refer a discharge grievance to an umpire who might rule in the grievant's favor.

Moreover, it is not clear whether arbitrators who do issue awards in deadlocked cases have the authority to bind the parties in light of Article 8 of the Master Freight Agreement which provides:

(continued)

committees have the authority to settle all disputes by majority vote, whether or not they arose under the contract.[13] While the impartiality of the committee members is supposedly guaranteed by virtue of the fact the Local union and employer directly involved in a given dispute act only as advocates and do not technically participate in the resolution of their particular grievance, as a matter of fact, the committee members are hardly disinterested.

Because those who sit on the committee are covered by the same contract, their decision may determine their future

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12 (continued)

> Any provisions in the grievance procedure of any Supplement hereto which would require deadlocked disputes to be determined by any arbitration process shall be null and void as to any grievances involving interpretation of the Supplemental Agreement or this National Master Agreement. The decision of the National Grievance Committee as to whether a grievance involves an interpretation which is subject to this procedure shall be final and conclusive.

13 For example, Article 45 of the current National Master Freight Agreement, Central States Over-the-Road Supplement, provides: "The Union and the Employers agree that there shall be no strike, lockout, tie-up, or legal proceedings without first using all possible means of settlement, as provided for in this Agreement . . . *of any controversy which might arise.*" (Emphasis supplied.) The provision then provides for the submission of such controversies for *settlement* to the joint committee system which does not effectively provide for impartial arbitration at any level. Article 7 of the Master Agreement provides that the grievance procedure "may be invoked only by the authorized Union representative or the Employer."

rights and liabilities in similar situations. NLRB Board Member Howard Jenkins has accordingly observed:

> Whatever result such a Committee of the protagonists might reach, it is in part the product of economic power, adjustment with an eye on other disputes or differences between them or on their future bargaining positions, and other considerations unrelated to the merits of the particular [individual] claim before the Committee. *Terminal Transport Co.*, 185 NLRB No. 96, 75 LRRM 1130, 1133 (1970) (dissent).

Moreover, there often is discussion among the union and employer members who sit on committees concerning upcoming grievances and possible solutions. Indeed, one student and advocate of the joint committee process has described this type of intercourse as the "expected norm."[14] In addition, it is standard practice that you vote in favor of your colleague's position or else he may not vote in favor of your position when you argue the next case before the committee on which he is sitting as a member. Thus, industry committee members will invariably close ranks and vote to uphold a colleague's discharge of an employee and the best the Union can do on his behalf is to deadlock the committee.

As a result, when a joint committee hands down a decision to the effect that an individual's breach of contract claim against his employer has been denied, it is obvious that what actually took place was that the Union decided

[14] Azoff, *Joint Committees As An Alternative Form of Arbitration Under the NLRB*, 47 *Tul. L. Rev.* 325, 361 (1973).

against pressing the member's grievance which would have deadlocked the committee. The only other alternative would be for the union representatives to attempt to negotiate a compromise or settlement of the member's claim in light of the fact that an outright victory is not within their power to secure because deadlocked cases are only referred to another joint committee and there is no opportunity to insist upon impartial arbitration.[15] In either case, the individual is effectively denied the full protections supposedly afforded by his contract. In any event, it should be clear that any so-called "final" joint committee decision denying all or even part of any employee's breach of contract claim against his employer is by no means the equivalent of an impartial arbitrator's decision on the merits of his contract claim.[16] It is in fact tantamount to no more or less than a union decision to process his grievance no further. Such union decisions are supposed to be scrutinized in accordance with the *Vaca* standards and they are not entitled to judicial deference pursuant to *Enterprise Wheel*.

[15] Grievances which are deadlocked at any committee are referred automatically to the next committee one step up the ladder in the hierarchy of committees whose jurisdiction encompass broader and broader geographic areas until a repeatedly deadlocked grievance may finally arrive before the National Joint Committee in Washington, as in *amici* Banyard's case. Article 8 of the National Master Freight Agreement then provides: "[i]f the National Grievance Committee is deadlocked on the disposition of the dispute then either party shall be entitled to all lawful recourse to support its position in the matter." Thus, while the Union retains the right to strike in an effort to procure a favorable disposition of its grievance, the likelihood of the Union's taking such action on behalf of an individual grievant in a discharge case is remote to say the least.

[16] *See* Feller, *supra*, p. 838.

There is an additional reason why this Court should reverse the decision below which treated the joint committee award as the equivalent of an arbitral decision: there simply is no assurance that the decision was based upon an impartial, objective evaluation of the evidence or that it was even based upon an application of the relevant contract provisions. It is widely recognized that the Teamster Joint Committee system "is designed to maximize and exploit the opportunities for horsetrading and collusion between the employer and the union." Azoff, *supra*, pp. 328-9, 336. While the system permits the Teamsters Union and trucking employers great flexibility in negotiating solutions to a wide range of problems they may encounter during the term of an agreement, it is this very flexibility which permits the arbitrary and unjust disposition of individual grievances often based upon considerations totally alien to the contract. Indeed, the grievance machinery is often used as a tool by union leaders for disciplining members who may have become a thorn in their sides for whatever reason. *Id.* at 329, 336. It simply cannot be said that this Court intended to sanction or encourage a policy of judicial deference to the "final" decisions rendered by Joint Committees in individual discharge cases.

It would surely impose an unwarranted hardship upon petitioners, and all others similar situated, were this Court not to make their employer available to them to obtain relief in their suit which derives primarily from its breach of contract. It would also impose an unjustified hardship if this Court were to sanction the traditional judicial approach for according deference to joint committee decisions unless the petitioners can actually prove arbitrariness or collusion. When sending this case back with

instructions to reinstate the petitioners' §301 action against Anchor, this Court should consider offering further guidance to the courts in their treatment of joint committee decisions in light of the fact the design and operation of the grievance machinery virtually immunizes the Teamsters Union and trucking employers from liability in §301 suits by individuals.

The root of the problem facing individuals in persuading courts that they should accord judicial review to their §301 suits lies in the unusual difficulty they face in adducing evidence demonstrating that the union breached its duty of fair representation. Courts normally focus exclusively upon the union's role in prosecuting a member's grievance, and because the courts have viewed the committee as the equivalent of an arbitral tribunal, exempting it from their scrutiny, it has been next to impossible for individual Teamster members to meet the threshold of evidence required to actually demonstrate fraud, collusion or bad faith. This limited approach is deficient and fundamentally unsound where the Teamsters Union has cloaked itself in the robes of both the prosecutor and the judge of its members' grievances. The Teamsters Union does not exercise its discretion in the processing of its members' grievances before Joint Committees; rather it exercises discretion at the Committee level in deciding whether to deny, compromise or deadlock their grievances. It accordingly will not do for the courts to limit their inquiry to whether the Teamsters Union *processed* a member's grievance before the joint committees.[17]

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[17] *See e.g., Hensley v. United Transporters, Inc.*, 346 F. Supp. 1108, 1115 (N.D. Tex. 1972), where the court found the fact that the Teamsters *represented* the discharged plaintiff at each joint committee hearing as compelling evidence of lack of fraud, collusion or conspiracy.

Moreover, in spite of the fact that the joint committee proceedings may well have been rigged, an individual Teamster will be hard put to demonstrate collusion because the Committee is designed to cover its tracks thoroughly. In the first place, the individual grievant may not even have been permitted to appear before the Joint Committee.[18] Those who do appear are generally asked to sign a statement acknowledging that they received the opportunity to present their grievance fully and this document is generally assigned great weight by the courts absent extrinsic evidence to rebut it.[19] And, such evidence is never available partly because the minutes of Joint Committee hearings are invariably terse and totally unilluminating, and because the Committee awards only state whether the grievance was granted or denied and never offer any supporting rationale.[20] Joint Committee decisions do not accordingly lead to the development of a body of law of the shop, particularly where they dispose of individual's grievances. For this additional reason, the outcome of individual grievances can, and regularly do vary 100% in spite of their similar nature and origin. There simply is no check upon the arbitrary disposition of their grievances. From the individual Teamster's point of view, the Joint Committee system operates in a totally Kafkaesque fashion to resolve their breach of contract grievances in discharge and discrimination cases and the courts seem to be joining in the conspiracy.

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18 *DeBelsey v. Tank Lines, Inc.*, 89 LRRM 2353 (D.Pa. 1973).

19 Azoff, *supra*, pgs. 358-9.

20 Azoff, *supra*, page 373. For example, *amici* Banyard's grievance was denied by the National Joint Committee with the following language: "The claim of the Union is denied. *See Banyard v. NLRB, supra*, 505 F.2d at 349.

THE NEED FOR A REVISED JUDICIAL APPROACH TO CONSIDERING INDIVIDUAL TEAMSTER BREACH OF CONTRACT CLAIMS

Collective bargaining agreements essentially create rules restricting management discretion in its dealings with employees. The construction and application of those rules is, of course, a function performed by management on a daily basis. As a result, "[t]he enforcement mechanism . . . is the essence of the industrial collective bargaining agreement . . . The agreement's most significant function is to provide a system for the adjudication, at the instance of an aggrieved employee, of complaints that management, in exercising its power to direct the work force, has not complied with the rules jointly agreed to.'" Feller, *supra*, page 742. But, as we have seen, Joint Committees are unable at best, due to their political nature and the equal strength of labor and management, to do more than negotiate compromises and settlements of employer contract violations involving individuals' grievances. This is hardly tantamount to effective enforcement. At worst, the Joint Committee members can collaborate to deprive a member of clear contract protections.

Whatever the Union's duty may be to the collective interests of all employees in bargaining units during the negotiation phase of collective bargaining — and occasionally during the administration phases[21] — where certain individual interests must inevitably be submerged in the collective interest, when it comes to enforcing individual contract rights and protections in discharge cases, a union's duty should be somewhat higher. In any event, Teamster

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21 *See e.g., Humphrey v. Moore, supra*, and other similar cases involving employee seniority disputes.

members covered by the National Master Freight Agreement need to be assured certain rudimentary elements of due process during the processing of their breach of contract claims against trucking companies that they currently do not enjoy under the joint committee system.

When speaking for the Court in *Republic Steel v. Maddox, supra,* Mr. Justice Harlan reasoned that a union's "interest in prosecuting employee grievances is clear . . . since conscientious handling of grievance claims will enhance the union's prestige with employees." 379 U.S. at 653. However, in this day and age of union security clauses in collective bargaining agreements, often covering an entire industry (e.g., trucking), and of little or no competition among unions to represent employees of a certain craft, employees often have little choice as to whether, or which union to join. (This is certainly true for most professional drivers working in the motor freight industry.) As major unions have joined the ranks of the country's large institutions, along with government and big business, and have become increasingly secure with their respective worker constituencies, the internal pressure upon them to zealously uphold an individual member's contract rights has diminished substantially. Of course, where the individual member's interests coincide with the union's institutional interests, or where they are representative of the interest of a large class of members, the union will want to pursue the individual's grievance. However, the same is not necessarily true where his grievance does not excite anyone in the union.

Thus, while an employee's discharge may not be a terribly significant event from the union's point of view, it is tremendously important to him. Not only has he lost

his job and source of income, he may have lost considerable accrued seniority, vacation benefits, pension credits, health insurance for himself and his family, self-respect and family tranquility. Where it is widely and reasonably believed that his discharge was wrongful, the union's failure to vindicate his contract rights and the court's rebuff to his appeals for redress can have a devastating impact upon employee morale and respect for law. The political implications, particularly at a time when faith in our legal institutions has been eroded by other events, cannot be ignored.

While the duty of fair representation was designed to serve as a "bulwark to prevent arbitrary union conduct against individuals stripped of traditional forms of redress" (*Vaca v. Sipes,* 386 U.S. at 182), it does not function to protect Teamster members who are regularly vulnerable to arbitrary and collusive tactics of their employers and Union. Due to the unusual structure and method of operation of Teamster Joint Committees, and in light of the current judicial criteria for evaluating their decisions, the Union and trucking employers have virtually immunized themselves from judicial challenge by aggrieved individuals for their wrongful conduct. Whatever the merits of adopting a more refined judicial approach for determining when other unions have breached their duty of fair representation in cases brought by individuals who are covered by contracts containing provision for impartial arbitration, there can be no question that a new, or more enlightened approach is required for determining when to defer to Teamster Joint Committee decisions in individual discharge cases.[22]

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[22] There have recently been a number of thoughtful articles reviewing and analyzing the post-*Vaca* case developments and offering suggestions for tightening the duty of fair representation. Feller,

(continued)

It will be incumbent on the courts to recognize that such decisions may have resulted from employer-union collusion, that they may not be based upon objective criteria or contract provisions, and that they at most represent only a decision by the Union not to process the member's breach of contract claim. The difficulty will enter where the courts attempt to evaluate the Union's decision not to press the grievance under the *Vaca* standards. Unfortunately, Joint Committee decision-making is not currently an open process which permits close judicial scrutiny.

Professor Feller has suggested the need to develop principles of law to be applied when parties come to the courts alleging a malfunction of their collective bargaining adjudicative system. As a general proposition, he recommends that they "should conform to, rather than conflict with, the norms of the system *except where it is consciously decided that these norms must be disregarded to safeguard otherwise unprotected interests.*" Feller, *supra*, pp. 772-773. *Amici* submit that the Teamster Joint Committee system is so lacking in procedural safeguards for individual employees

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22 (continued) *A General Theory of the Collective Bargaining Agreement*, 61 *Calif. L. Rev.* 663 (1973); Clark, *The Duty of Fair Representation: A Theoretical Structure*, 51 *Tex. L. Rev.* 1119 (1973); Comment, *Post-Vaca Standards of the Union's Duty of Fair Representation*, 19 *Vill. L. Rev.* 885 (1974); Flynn & Higgins, *Fair Representation: A Survey of the Contemporary Framework and a Proposed Change in the Duty Owed to the Employee*, 8 *Suffolk U. L. Rev.* 1096 (1974); Tobias, *A Plea for the Wrongfully Discharged Employee Abandoned by his Union*, 41 *U. Cin. L. Rev.* 55 (1972); Tobias, *Individual Employee Suits for Breach of the Labor Agreement and the Union's Duty of Fair Representation*, 5 *Toledo L. Rev.* 514 (1974).

that its decisions disposing of their individual grievances should not be entitled to a judicial presumption of regularity and fairness. At the very least, the courts should be instructed to defer in such cases only where the Joint Committee decision sets forth in sufficient detail a rationale which would permit them to evaluate the decision to abandon the member's grievance under an "arbitrary test" similar to that used in evaluating the final decisions of administrative agencies under the Administrative Procedure Act.[23] There can be no doubt that a judicial standard for review which permits an employer covered by the Teamsters Master Freight Agreement to get away scott free because an employee cannot prove union malice or bad faith tips the balance too heavily against the individual and in favor of permitting the Teamsters Union unbridled flexibility in administering the contract. The effect is clearly violative of *Vaca*.[24]

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23 This test is specifically advocated by Professor Feller in his discussion of "Propositions" at pages 773 *et seq.* It is echoed by other commentators. *See* fn. 22, *supra.* The test would be similar to the one in effect applied by this Court in *Humphrey v. Moore, supra.* Moreover, in its opinion in *Enterprise Wheel*, the Court recognized that a well reasoned opinion "tends to engender confidence in the integrity of the process and aids in clarifying the underlying agreement." 363 U.S. at 598.

24 The necessity of a showing of bad faith utilized by most post-*Vaca* courts may derive in part from Mr. Justice Harlan's majority opinion in *Motor Coach Employees v. Lockridge*, 403 U.S. 274 (1971). In discussing a union's duty of fair representation, the Court stated that the doctrine "carries with it the need to adduce substantial evidence of discrimination that is intentional, severe, and unrelated to legitimate union objectives . . . ." *Id.* at 301. However, Lockridge did not sue his company under §301 for breach of contract since his discharge had resulted from a union request on the grounds that he had breached the union security clause by non-payment of dues. Thus,

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CONCLUSION

For the foregoing reasons, *amici* respectfully submit that the Court of Appeals' decision upholding dismissal of the employer from an employee §301 breach of contract suit should be reversed and that the case should be remanded with appropriate instructions concerning the proper judicial standards to be applied in such cases.

Respectfully submitted,

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[24] (continued) the Court's discussion of the duty of fair representation paralleled its discussion in the *Huffman* and *Humphrey* cases where the principal issue also concerned only the reasonableness of union action in a context where the union required flexibility. The same considerations do not, however, generally pertain in §301 suits by individual employees against their employers for breach of contract. The employee's claim generally involves a relatively simple construction and application of contract provisions and does not conflict except to the extent the union might wish to trade off his meritorious grievance in exchange for some other management concession which might benefit the union's institutional interests more directly. We submit that such trade-offs should not be encouraged by a policy of judicial deference. To do so would erode employee respect for law and would jeopardize the entire foundation of the system of industrial self-government this Court and the Congress have sought to nurture.